

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Government, Military and Veterans Affairs Committee
March 10, 2011

[LB643 LB654 LR22]

The Committee on Government, Military and Veterans Affairs met at 1:30 p.m. on Thursday, March 10, 2011, in Room 1507 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB643, LB654, and LR22. Senators present: Bill Avery, Chairperson; Scott Price, Vice Chairperson; Lydia Brasch; Russ Karpisek; Rich Pahls; and Paul Schumacher. Senators absent: Charlie Janssen; and Kate Sullivan.

SENATOR AVERY: Good afternoon. Welcome to the Government, Military and Veterans Affairs Committee. My name is Bill Avery. I Chair the committee and I represent District 28 here in Lincoln. Before we start, I'm going to introduce the members of the committee. We do have a couple of people who are going to be late and one who will not be here. This is basketball season and (laugh) constituents playing in basketball tournaments are important. But soon to join us will be Senator Rich Pahls from Millard. Seated next to him is Senator Lydia Brasch from Bancroft. Charlie Janssen is next from Fremont. And seated next to him is Senator Scott Price, the Vice Chair of the committee, from Bellevue. To my immediate right is Christy Abraham, the legal counsel for the committee. Soon to join us will be Senator Russ Karpisek from Wilber. And as I said, Senator Kate Sullivan from Cedar Rapids will probably not make it back in time since, I think, that her team has a chance to win the championship so she's got to be there. And then we have Senator Paul Schumacher from Columbus. The committee clerk is Sherry Shaffer. Those of you who wish to testify on any of the bills on our agenda today, we ask that you fill out this form. It is available at the entrance to the room at each door. This, you simply need to print it clearly so we can read it and hand it to Sherry and she will record the information in the record. If you are here and wish to record your support or opposition to any bill that we discuss today but do not wish to testify, we ask that you fill out this form. That, too, is available at each entrance. We will be using the light system. The green light means that you have four minutes for your testimony. When the amber light comes on, there is only one minute remaining. And by

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Government, Military and Veterans Affairs Committee
March 10, 2011

the time the red light comes on you should be finished. Do not be shy about finishing early. (Laughter) Although we do value full discussion of issues, this committee likes to remind the people that we are the only Legislature in the country that requires a public hearing on every bill. We take it seriously that the public has an opportunity to have their say on everything that we propose. So if you are here and wish to participate, you are welcome to do that. We would ask that when you take the seat at the table that you state your name clearly and spell it, first name and last name, for the record. If you have any material that you want to share with the committee, you will need 12 copies. If you're short of that, you can let us know and the page will help us. Do we have...Kyle Johnson is our page from Sutton. He will be helping us out today. If you have any electronic equipment that makes noise, please put them on silent. If you have a laptop, we ask that you not bring those to the table if you're testifying. Silence your phones and your computers just so that we don't have a lot of distractions. We are going to follow the order as the agenda is posted outside the door. And we will start with Senator Lautenbaugh on LB643. Welcome to the committee. This used to be your committee. You were...yeah.

SENATOR LAUTENBAUGH: I apologize. I've got three different bills in three different committees today so I'm trying to open on the right one here, if I could.

SENATOR AVERY: If you did the wrong one, we may not notice. (Laugh)

SENATOR LAUTENBAUGH: (Exhibit 1) Thank you, Mr. Chairman and members of the committee. My name is Scott Lautenbaugh. I'm the senator from District 18. And I bring to you what I believe is a very simple and straightforward bill today. I believe that it is properly referenced to this committee as it does deal with the public records statutes. And I think there's a tradition of any time we change those this is the committee that makes the call. So I'm happy to be here and happy to be opening on this bill. This is very simple. All this bill provides is that the police reports taken in the course of an accident investigation, which by law you are required to fill out if you're involved in an

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Government, Military and Veterans Affairs Committee
March 10, 2011

accident, are no longer generally available to the public. The reason for this is very simple. Any time you are in any kind of an accident you receive approximately nowadays 100 letters from various firms soliciting your representation, they're soliciting...offering to represent you, excuse me. And I believe at a certain level that is sort of an unseemly level of solicitation. It's also intruding upon people's privacy at a time when I don't believe that intrusion is warranted. I would warrant to you that there's not anyone in our society today who does not know how to go find an attorney and does not go find one, I won't say at the drop of a hat but often. I mean, we all know how to say and pronounce mesothelioma just because we watch late night TV. There is no shortage of attorneys, there is no shortage of knowledge of attorneys. There's no shortage of attorneys in the phone book. This bill would simply eliminate the use of these reports for commercial purposes. And I say that because, as I believe is all of our nature, there was some opposition to this bill from various entities. And we did come up with an amendment that has been distributed to you that addresses, I think, the legitimate concerns that were expressed to me. So if you are an attorney representing someone, you have a right to get the accident report. If you are an insurance company trying to investigate an accident, decide whether or not you should pay the claim, you have the right to get the accident report. If you are a state...the state or federal government, to compile statistical information, you have the right to the report. The public media has a right to get the report under the amendment. And a court of competent jurisdiction can order the production of such a report for the discovery process. I think with this amendment, this is a case where the amendment vastly improves a bill. I was struggling with an amendment that would have just said you may not use these for...these reports for a commercial purpose as we do with the voter file which we make available to people. But you are not supposed to use that to sell life insurance or whatever because of the information that's contained therein. I think this is a natural extension of that line of thought. These are reports that you have to provide, you have to file after you've been the victim of an accident or involved in an accident. And I believe while there are legitimate purposes for getting these reports, and people have legitimate needs to do that, and the amendment sets forth who they are and when

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Government, Military and Veterans Affairs Committee
March 10, 2011

they can and that they still can, I think this is a common sense, reasonable restriction on the availability of these reports otherwise. I would be happy to take any questions. As you know, I usually work alone, so I don't think I've even asked anybody to come testify in support. So I'll be anxious to see who comes up here just like you will, I'm sure.

[LB643]

SENATOR AVERY: Thank you. Questions from the committee? Senator Schumacher.

[LB643]

SENATOR SCHUMACHER: Thank you, Senator Avery. Senator Lautenbaugh, looking at your exceptions, for purposes of this subdivision, public media means newspaper or other periodical, radio or television. What about some of these Web page news services that, you know, what's the one in...Nebraska Watchdog, for example? Would that be a periodical? [LB643]

SENATOR LAUTENBAUGH: Well, I'm not familiar with that one. And I don't know if this Internet thing is going to catch on. (Laughter) But if it does, I think that would be a reasonable expansion of the amendment because it was not my intention to exclude those from the ambit either. [LB643]

SENATOR SCHUMACHER: What about somebody Tweeting these things out to the public media? [LB643]

SENATOR LAUTENBAUGH: I'm not sure...there would have to be some point at which you would distinguish between...I mean we give out press credentials in some way. There has to be some way to measure who is a press organization and who is trying to do this for a commercial purpose. [LB643]

SENATOR SCHUMACHER: Well, if we put this in the law, we need to suggest to some poor judge, so some attorneys can fight over it, what we meant. [LB643]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Government, Military and Veterans Affairs Committee
March 10, 2011

SENATOR LAUTENBAUGH: Well, and if we do need to clarify it to make sure that we're not excluding any legitimate albeit new media outlets, that would be something I'd be willing to work with you on, obviously. [LB643]

SENATOR SCHUMACHER: Okay. Thank you, Senator. [LB643]

SENATOR AVERY: Senator Karpisek. [LB643]

SENATOR KARPISEK: Thank you, Senator Avery. Senator Lautenbaugh, (laugh) I'm not trying to be a wise guy or I really don't know this. Do they...maybe some attorneys look at death notices, obituaries and maybe send something there or is there anywhere else that they look and send things out? I mean, like...well, divorce decrees wouldn't really work, but... [LB643]

SENATOR LAUTENBAUGH: I don't know the answer to that. I know this is the most common source that I am aware of. I don't think we can stop running obituaries and the paper prints those. And you can use those for what you will. I don't know if those are ever used for the same information or not. [LB643]

SENATOR KARPISEK: Well, that's true. It is two different things, isn't it. Is there anything else, I guess what I'm getting at, is there anything else that needs to be included in this sort of thing that there is a problem or that anyone could draw a reasonable conclusion that well, gee, that's the same thing, why don't you do it to them? [LB643]

SENATOR LAUTENBAUGH: Perhaps first reports of injury and workers' comp cases would have a similar effect and should be similarly restricted. Those even have the additional problem of they actually include allusions to the actual injury, which I think on a certain level would run afoul of HIPAA if nothing else. I think Senator Price agrees.

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Government, Military and Veterans Affairs Committee
March 10, 2011

[LB643]

SENATOR KARPISEK: Very good. Thank you, Senator Lautenbaugh. Thank you, Senator Avery. [LB643]

SENATOR AVERY: Any other questions? I don't see any. You going to have to run to another committee or are you going to stay here? [LB643]

SENATOR LAUTENBAUGH: I'm going to stay for a bit depending on how...and I'm last in Judiciary and I have someone else covering HHS. So hopefully I can stay. [LB643]

SENATOR AVERY: All right. Proponent testimony. We'll now accept proponent testimony. (Laugh) All right, seeing none, we'll go to opponent testimony. Opponents. Good afternoon, sir. [LB643]

RICHARD HEDRICK: Richard Hedrick, H-e-d-r-i-c-k. I am against this bill. They need more bills that can be taken. A friend of mine, he's been trying to get information which is available and it should be out but he can't get it, anything for it. We don't need more secrets in the government. Thank you. [LB643]

SENATOR AVERY: Your friend is seeking a public record? [LB643]

RICHARD HEDRICK: Oh, I forgot to give my. [LB643]

SENATOR AVERY: Mr. Hedrick, is your friend seeking a public record and is being denied that? [LB643]

RICHARD HEDRICK: Yes. [LB643]

SENATOR AVERY: Do you know what kind of record it is, what the... [LB643]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Government, Military and Veterans Affairs Committee
March 10, 2011

RICHARD HEDRICK: I could find out. [LB643]

SENATOR AVERY: Well, if it's a violation of state law, you definitely ought to tell your friend to press his case because... [LB643]

RICHARD HEDRICK: It's what? [LB643]

SENATOR AVERY: If it's a violation of state law, your friend should press his case because we have some pretty generous, open records laws in this state. [LB643]

RICHARD HEDRICK: Well, I'll find out more about it. [LB643]

SENATOR AVERY: Okay. Any questions for Mr. Hedrick from the committee? Thank you. Any other opponent testimony? Good afternoon. [LB643]

MANDY STRIGENZ: (Exhibit 2) Good afternoon, Senators. My name is Mandy Strigenz and I am here today representing the Nebraska Association of Trial Attorneys. We are opposed to this... [LB643]

SENATOR AVERY: Can you spell your name for us. [LB643]

MANDY STRIGENZ: Strigenz is S-t-r-i-g-e-n-z. [LB643]

SENATOR AVERY: Thank you. [LB643]

MANDY STRIGENZ: All right. We are opposed to this bill for several reasons, the first being philosophical in nature. This bill is essentially contradictory to the open records laws that you referenced earlier, Senator. As a society, I think, we're moving really towards easier access towards our public records, not more difficulty. This is due in

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Government, Military and Veterans Affairs Committee
March 10, 2011

part, obviously, to the Internet. And also, I think, as citizens we want transparency from our government, not additional secrecy. From a practical matter, I'd like to point out several examples for you why these reports are important to the public. First of all, the report I've generated to all you senators so far is a hit-and-run accident that recently came to my office. And the reason why this is important that our citizens have access to these reports in hit-and-run situations is this was a drunk driver who hit my client, took off and my client literally would have no way of tracking down this drunk driver had she not been able to access the report itself, find out who it was, etcetera, what happened. And I'm sure you've all seen a copy of an accident report, but as you'll note it's full of, obviously, useful information to the person who was hit by the at-fault driver. You know, this one provides....and again, I want to point out there was talk earlier about the accident reports are required to be filled out by the people who are in the accident. That is true. But really the most important one is the one that's filled out by the police that report to the scene of the accident. And on this one, you'll note on the last page there's a diagram which is very important because that helps us as attorneys evaluate the cases as they come into our office. Even in a normal accident situation, the accidents...the accident reports are important because they list out the witness names and phone numbers, the insurance information for the other driver, all of that is good information for someone to have, especially those people who don't have an attorney because they can go to the police station and get these reports and then maybe pursue their claim on their own, if they choose to do so. So it's nice to have all that information right there without them having to then go do the investigation on their own. So essentially, this lets the police do their job, not individual citizens trying to track down, you know, people who have hit them in an accident, which is important. Also, this information is helpful to insurance companies because they are able to see if what their insured has submitted as their report matches up to what the police have submitted. And then myself, as an attorney I need access to these reports so that I can evaluate whether or not to take a case. If someone comes to my office and says, this is how the accident happened, I need to be able to say, is this person telling the truth or not? And the only way I'm going to be able to do that is to go get the police report and take a look

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Government, Military and Veterans Affairs Committee
March 10, 2011

at it. And that's the problem with the amendment is that the amendment relates to just retained attorneys. Well, I don't want to retain the case (laugh) until I know whether or not that person is being truthful and honest about the manner in which the accident happened. So that's my problem with the amendment. I know there was talk about the direct mail solicitation issue. The only thing I'd like to point out to the senators about that is that all sorts of public records already are subject to direct mail solicitations, including birth records, death records. Somebody asked a question earlier about the solicitation on death notices. And I can tell you that does in fact happen. I'm aware of a couple of law firms in Omaha that go through the obituaries and then send a courtesy letter with regard to probate. So it's fairly common for that to occur, even in health insurance, life insurance situations. And then also with reference to the number of letters that people receive, I just want you all to know that typically if someone comes to my office on an auto accident case they've actually usually only received two or three copies of the accident report. And the envelope that they receive is clearly marked as an advertisement. So if they don't want to even open the envelope, they just pitch it in the trash like you do with all your other junk mail. So it's really not that big of an invasion, I don't think, on our citizens to have access to that coming their way. We as attorneys are limited by ethical rules. We cannot call those people. We cannot contact them directly. I, personally, don't solicit. But I'm just saying for those people that have received solicitations, I don't really receive that many complaints about it. And then finally, I think it does level the playing field for those people who do decide that they need an attorney to help them in the situation because, obviously, when they get their accident report it's kind of nice for them to be able to look at it and say, hey, here, this is what happened, this is great and then be able to go talk to somebody in more of an informed matter. So that's my comments, unless you have any questions. [LB643]

SENATOR AVERY: Good timing, thank you. Questions from the committee? Senator Schumacher. [LB643]

SENATOR SCHUMACHER: Thank you, Senator Avery. Your objection, basically, to the

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Government, Military and Veterans Affairs Committee
March 10, 2011

exceptions was at least the first two that basically says a person or attorney representing them have access to it, was that you don't know if you're going to represent them until you see the facts. [LB643]

MANDY STRIGENZ: Right. [LB643]

SENATOR SCHUMACHER: What if that was to simply say or an attorney who produces written authorization from the person? So you wouldn't have to establish the attorney-client relationship, but just they give you a note that you've got permission to go see the file. [LB643]

MANDY STRIGENZ: I guess that does help me out. Although it does...it adds an extra layer of communication or contact with that client. And then you, you know, at what point is the attorney-client relationship established? Is it established at that point in time that they give you authorization to go get their accident report or not? If I'm going to go get their accident report, I will have to open a file at my office. And then at that point we go through some cost procedures, etcetera to be able to have the file opened, put them on our case list. We list them as a client the minute that they, you know, sign any sort of paperwork on our behalf. So, I mean, I think that's going to get a little bit complicated. And I think that the other factors in terms of open access to record would far outweigh, you know, that one, singular exception. I don't know that I want to go around and get accident reports for everybody who walks in my door. I don't know. It's just... [LB643]

SENATOR SCHUMACHER: They will be elected with you. [LB643]

MANDY STRIGENZ: Yeah. I just, I think it's just so, honestly, it's so handy from a practical standpoint because most people do walk in my door with a copy of the accident report. [LB643]

SENATOR SCHUMACHER: It seems, at least what I picked up from the opening

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Government, Military and Veterans Affairs Committee
March 10, 2011

comments was that this is basically to deal with unsolicited mailings from an attorney who, apparently, is hard up for business and going through a list of accident reports, trying to find people who might hire them. And, I mean, to...this...if you already were...somebody came into your office and said, look, check this out. You said, ah, I don't know, it sounds like a fishy story to me, but nevertheless I'll check it out. And you have them sign a statement saying, we hereby authorize you to check it out and, oh, by the way, we realize no attorney-client privilege is being set, you are not being retained, we haven't accepted the case, you are not a client. And you put that in a nice little stock paragraph on the bottom of there, you can go down to the police station and get the report. [LB643]

MANDY STRIGENZ: Yeah, you could do that. But then again that just gets back to the whole issue of why are we creating a special class of individuals who are not allowed to direct mail solicit when everybody else is? I mean, public records are used for commercial reasons all the time. There are situations with insurance, there are situations, like I said, with the death notices, literally, everything in America it seems like these days is going to public access. And, you know, our privacy is less and less and less in all areas. So I can't understand why we're picking out one particular sect of society, a car accident, and saying, oh no, that...that...that's no longer happening. And I know Mr. Lautenbaugh said everybody knows that they can get an attorney. And that's true, obviously, everybody knows perhaps how to track down an attorney. But I think that's not the point. Again, what about those people who really don't want to go get an attorney? What about somebody who wants to go get the accident report by "themselves" and look and see what did those witnesses say, what did they tell the police, what's their phone number, what's their name. [LB643]

SENATOR SCHUMACHER: Well, I think the exceptions that have been proposed say the subject or somebody involved in the accident has got the right go down there. And they don't have to have an attorney to get the report. [LB643]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Government, Military and Veterans Affairs Committee
March 10, 2011

MANDY STRIGENZ: Okay. I mean, I haven't actually seen the amendment. Today was the first time I heard mention about the amendment. So, I guess, I just, you know, I don't know why we're... [LB643]

SENATOR SCHUMACHER: What are the rules of the bar association or the Supreme Court with regard to unsolicited contact to chase down a client? [LB643]

MANDY STRIGENZ: What are the rules? [LB643]

SENATOR SCHUMACHER: Yes. [LB643]

MANDY STRIGENZ: The ethical rules state that you cannot call the client directly, you cannot directly contact them in person. You have to clearly state that it is in fact an advertisement. And again, I don't think it's as big of a problem as Senator Lautenbaugh, you know, maybe indicates. I don't know. I'm just going off of my own experience. He may have other experiences. I'm just saying, and obviously people in his district have told him this is a problem or we wouldn't be here right now. But I'm just telling you from my experience what my clientele has told me is that typically they'll receive, you know, two, three, maybe four letters. And again, that's no different than I've had three children and after every child was born I receive two, three, four solicitations in the mail for life insurance, health insurance, things related to baby products and such. So I just don't know why we're creating this, you know, this special class basically against car accidents. [LB643]

SENATOR SCHUMACHER: Okay, thank you. [LB643]

SENATOR AVERY: Any other questions from the committee? Don't see any. Thank you very much. [LB643]

MANDY STRIGENZ: Thank you. [LB643]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Government, Military and Veterans Affairs Committee
March 10, 2011

SENATOR AVERY: Any other opponent testimony? Good afternoon, sir. [LB643]

SHAWN RENNER: Good afternoon, Senator Avery, members of the committee. My name is Shawn Renner, R-e-n-n-e-r. I'm a lawyer with the Cline, Williams law firm here in Lincoln. I appear today on behalf of Media of Nebraska, Inc. I am a lobbyist registered on behalf of that organization. Media of Nebraska is a nonprofit corporation comprised of representatives of the press and broadcast news media. I debated with myself whether to appear neutrally or in opposition to the bill. I am aware of the amendment that Senator Lautenbaugh has offered and I've had a chance this morning to take a look at it. I haven't studied it in any great depth but did...am aware of it anyway. And this is my decision, I discussed it with my client first, but decided to testify in opposition rather than neutrally for a couple of reasons today and have a couple of perspectives I'd like to offer the committee. The first one, I guess, is somewhat of a personal one based on some of the conversations we've had. I was in a relatively serious car accident about a year and a half ago and I received roughly two dozen solicitation letters from lawyers. I don't know that they violated my privacy as such. They arrived in envelopes that were clearly marked as solicitations, it has to say this is an advertisement on the outside, it has to say it on the letter so it's very clear what is going on. I found them kind of humorous because about two-thirds of them were wrong. They either...some of them were addressed to Ms. Shawn Renner, I'm obviously not a Ms., some had my name misspelled. Some had the accident at the wrong intersection, some sent me copies of the wrong accident report. It was a pretty mixed bag of stuff. And they all ended up where I think is the appropriate place for those sorts of things to end up and that's in the circular file folder that sits beside my desk. And that's, I think, most people's answers when they receive those sorts of things. It's not...you don't have to open the envelope, if it's someone that you don't know and it says it's solicitation on the front of the envelope it's pretty easy to throw it away. It doesn't take significant effort or thought or trouble or privacy invasion to do that. The rules we have for lawyer advertising are not just set by the Nebraska State Bar Association, they're set by the United States Supreme Court.

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Government, Military and Veterans Affairs Committee
March 10, 2011

Our rules track the First Amendment as understood and set out by the United States Supreme Court in a series of cases. So I, you know, we're stuck with that situation as a matter of constitutional law. But again, I think the answer to most everybody who receives these kind of solicitations is pretty easy, you just throw it away and you don't pay much attention to it. And you hire a lawyer in the way that most people do, and that is you ask a friend, you go to a previous lawyer that's represented you or you pick however you do to choose a lawyer. The news media use accident reports. And there are two kinds of accident reports, we have to be clear on this. As Ms. Strigenz identified, one is submitted by a party to the accident. Those documents are not public record by statute. And I'll give you the statutory site so you can take a look at it. That would be Section 60-699. The other type of accident report is the one that is filed by the police or sheriff that investigates an accident. And these are, by definition in the statute, accidents where there is death, injury or apparently more than \$1,000 damages. Those are accidents where reports need to be filed. The police accident report is in fact a public record, it's listed by statute. And I don't think that Senator Lautenbaugh's bill would take care of that because there's a separate statute which would be 66-99 which specifically says that the accident reports filed by police officers are public records. So if we're going to accomplish this, that statute probably needs to be amended as well. It's a bit of an odd thing for an opponent to a bill to say, but we could just as well have legislation that works if we're going to have legislation, it seems to me. Second, while the bill talks about accident reports, I think the committee needs to be aware that there are a wide variety of types of accident reports that are referred to throughout our statutes, many of which, perhaps most, have nothing to do with automobile accidents. I did a quick computer search this morning and found the term "accident report" within two or three words of each other in about a half a dozen statutes. For example, a rail road has to make an accident report to the Public Service Commission where an explosion, fire or release of noxious fumes occurs, that's Section 75-426. A chemigation permitholder has to file an accident report with the natural resources district that he or she lives in where the chemigation license was issued, and then the Department of Environmental Quality investigates those accidents, that would be Section 46-1131. The

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Government, Military and Veterans Affairs Committee
March 10, 2011

owner of an amusement ride has to send a copy of an accident report required by his insurer to the Commission of Labor anytime there's an accident on an amusement ride, that would be Section 48-1808. Every person operating a plant where machinery is used has to report all fatal accidents to the Department of Labor within 24 hours, that would be Section 48-421. Reports of accidents have to be filed with the Workers' Compensation Court by employers or their insurers, that would be 48-144. And then the Nebraska Department of Aeronautics is required to report all accidents in aeronautics in this state of which it is informed to the Federal Aviation Administration. This is a five-minute computer search. I'm confident there are dozens of other examples where the term "accident report" is used in our statutes. So if what we are doing is talking about the accident reports that are filed following a motor vehicle accident, we ought to probably be specific about that so that we don't create a variety of unintended consequences. And this bill does not do that. I indicated...may I have just another minute, Chairman? [LB643]

SENATOR AVERY: Yes. [LB643]

SHAWN RENNER: I indicated I'm aware of the amendment. It specifically exempts public media, that's my clients, at least in broad definitions. The problem Media of Nebraska has with that sort of exemption, we've opposed this sort of thing in the past, it's been a traditional position of the news media. First one was mentioned by Senator Schumacher, it is increasingly common that news media report on the Internet as opposed to in paper or by broadcast. In fact, I heard a radio report this morning that the Daily Nebraskan, the student newspaper on campus, is looking to be entirely Internet-based next year for cost reasons. Does that mean that it as a newspaper that's on the Internet would be entitled to get access to accident reports under the amendment to the bill? I'm not sure. That is clearly the wave of the future. I don't know that there will be...I don't know what it's going to look like in ten years. But I can guarantee there will be fewer newspapers that are printed on print and more newspapers that are printed on-line or published on-line. And that at least needs to be dealt with if we're going to

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Government, Military and Veterans Affairs Committee
March 10, 2011

deal with it in any way. Final point, public records are public records. My clients, the news media, have always been nervous about being singled out as an entity that gets records when the public doesn't. The reason public records are public is because a decision has been made at some point in the past that all records of our government are public unless there's a statute that says they're not, which means by far the vast majority of documents in the hands of our government agencies are available to all of us. And that's because it's a democracy and it's helpful to have information about how your government runs when you're participating in a democracy. I'm sorry, I went over my time. Thank you. [LB643]

SENATOR AVERY: All right, thank you. Thank you. I was going to ask you if you would comment on the amendment anyway. That was going to be the first question. Questions from the committee? Senator Price. [LB643]

SENATOR PRICE: Chairman, thank you. Mr. Renner, thank you for your testimony. My wife was in an accident and we got those same letters multiple times. In listening to the debate, understanding public records and what you said, 66-99, notwithstanding that and the Section 48 commentary, I'm wondering whether public record about the suffering of somebody in an accident because you said they had damages or a personal injury in the accident. And I'm wondering what public service, if you're talking about, I mean, you're talking about chemigation, obviously there's a public service for if something happens, you know, when we're talking about aeronautical. But when you're talking about an individual family member, what public service I wonder is being satisfied by putting out and then now we've had, and I (inaudible) one thing and I'll let you go on about it. But twice now we've heard testimony if you don't like it, throw it away. But with all this information, you know, nothing redacted (inaudible). I mean, some of it's redacted. I mean, some of it's redactional. We're talking about policy numbers of the cars. There's a lot of good information here that someone could use in database searches and things of that nature. I'm just curious to understand what public service is done? An accident, the police responded to it so we know how they are

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Government, Military and Veterans Affairs Committee
March 10, 2011

allocating the resources and cars. Okay, I buy that. But on the personal basis, what good did it to know that you had an accident and that everyone went to a list and could look at it and solicit and then solicit you? How is the public served that way? [LB643]

SHAWN RENNER: Well, in the accident that I was involved in the person on the other side happened to be drunk and there was a story that appeared in the newspaper about it the next day. And that's my perspective. I'm appearing here today on behalf of clients that report things. When drunk drivers cause accidents it gets reported. When people die in accidents it gets reported. When people that are in the public news, when Senator Price gets in an accident it is news, it gets reported. My clients, the news media, don't regularly report things that don't have some at least perceived importance to the public out there. And we can argue about whether my clients get it right or not, there's a lot of things that they report as news that many people believe aren't news but that's their business. They figure out what they think will be of interest to the public out there and they report that. And it is clear that in Lincoln and Omaha, on down to the smallest city if, for example, the chief of police gets in a car accident that's news. It is whether we like it or not. And the fact that the way you learn that is because accident reports are filed and you have access to them as public records is important to the news media. That's how they learn that accidents happen. That's how they learn the facts of accidents. And that's how they make decisions about whether this is the sort of accident that they ought to write a report on or broadcast a report on. [LB643]

SENATOR PRICE: And I don't disagree with you on that. I just, my question talked to the point about generating business off of my misery. You know, that... [LB643]

SHAWN RENNER: I find that as offensive as you do, sir. And if I were king of the United States, I'd probably make an exception to what I understand the First Amendment to be, to prohibit lawyers from doing that. I don't think it hinders my profession as far as I'm concerned. I don't think it provides a public service. And I, personally, found it offensive when I was on the other end of it. That said, I mean part of living in a society is you get

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Government, Military and Veterans Affairs Committee
March 10, 2011

offended by things that happen. That's just kind of the nature of it. And when it's as easy as throw it away without opening it, that's a very small price to pay, it seems to me, for being offended by solicitation. [LB643]

SENATOR PRICE: All right. Thank you, sir. [LB643]

SHAWN RENNER: Thank you. [LB643]

SENATOR AVERY: Any more questions? Thank you, Mr. Renner. [LB643]

SHAWN RENNER: Thank you, committee. [LB643]

SENATOR AVERY: Any other opponent testimony? Opponent? You're neutral. We're still on opponents. I'm waiting. (Laugh) I don't see any more. All right, now we'll move to neutral testimony. Good afternoon. [LB643]

COLEEN NIELSEN: Good afternoon, Chairman Avery and members of the Government, Military and Veterans Affairs Committee. My name is Coleen Nielsen, spelled C-o-l-e-e-n N-i-e-l-s-e-n. And I am the registered lobbyist for the Nebraska Insurance Information Service. The Nebraska Insurance Information Service is a local trade association of property casualty insurance companies doing business here in Nebraska. Originally, when we first saw this bill at the beginning of the year we took positions on our bills and had opposed this bill. But then we approached Senator Lautenbaugh with our concerns about obtaining the public records once our insured had filed a claim. And he accommodated our concerns through the amendment. So we support the amendment. And I'd be happy to answer any questions. [LB643]

SENATOR AVERY: Okay, thank you. Any questions from the committee? I don't see any. Thank you. [LB643]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Government, Military and Veterans Affairs Committee
March 10, 2011

COLEEN NIELSEN: Thank you. [LB643]

SENATOR AVERY: Any other neutral testimony? Okay, Senator, you stayed just long enough. [LB643]

SENATOR LAUTENBAUGH: Well, thank you, members of the committee. I think we did have a good discussion here and good information. Like I said, I will, of course, be willing to work and address Senator Schumacher's concerns about different types of media having access to these reports. And it's...I'm actually a fan. I was joking before when I said I was unfamiliar with Watchdog. So I know exactly what he was referring to. And it was not my intent to exclude them from information of course. I did...I was mindful of the concerns expressed by the representative from the Trial Attorneys Association. I believe most of them are addressed by the amendment. And I think, as the attorney who testified indicated she's aware of the practice, but it's not one that her firm need to rely upon for business. And so I think it's a common sense, reasonable restriction. It is true that, as Mr. Renner pointed out, that the current law does make these public records. But there are things for good reason we do exclude. And I think, as Senator Price pointed out, this may be one of those areas where even the occurrence of an accident might be news worth and maybe should be public record. But it is disturbing to me when these mandatory things are used for commercial purposes. We make the voter file available. And the World-Herald, for instance, made great use of the voter file during the recall, indicating who had signed petitions, who hadn't, how they were registered, etcetera, etcetera. And that was not for a commercial purpose per se, that was for a public information purpose. But we have a limitation in law that we do not use the voter file for commercial purposes. And I think this is just an extension of that philosophy to protect this information and protect these people. [LB643]

SENATOR AVERY: Would you be willing to comment on Mr. Renner's point about the defined accident reports and referencing all the other places in law where you see that word? [LB643]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Government, Military and Veterans Affairs Committee
March 10, 2011

SENATOR LAUTENBAUGH: Oh, absolutely. And it isn't my intention really to be more restrictive than would be necessary. I don't believe that accident reports from rail roads and airplanes and chemical oversprays and whatnot certainly is not what I was going after here. And if we need to clarify this to make sure that we are talking about the most common thing, which would be automobile accidents and possibly workers' compensation first reports of injury, that would amply accomplish my purpose. And I did not mean nor do I desire to restrict all those other things. [LB643]

SENATOR AVERY: Okay. [LB643]

SENATOR LAUTENBAUGH: It was probably just unartful drafting on my part that led to the concern. [LB643]

SENATOR AVERY: Any questions? All right, thank you. [LB643]

SENATOR LAUTENBAUGH: Thank you. [LB643]

SENATOR AVERY: All right. That ends the hearing on LB643. And we will now move to open the hearing on LB654 by Senator Mark Christensen. I understand that Senator Christensen is in another...is that right, Dan, he's in another committee? [LB643]

DAN WILES: Yes, he's in another hearing. [LB643]

SENATOR AVERY: Okay. Well, we welcome you to the Government Committee. [LB643]

DAN WILES: He was lucky enough to have four today so. Good afternoon, Mr. Chairman and members of the Government, Military and Veterans Affairs Committee. I'm going to speak as if this was Senator Christensen's introduction so. [LB654]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Government, Military and Veterans Affairs Committee
March 10, 2011

SENATOR AVERY: Well, read your name into the record though. [LB654]

DAN WILES: (Exhibit 1) My name is Dan Wiles. I'm the legislative aide for Senator Christensen. My name is spelled D-a-n W-i-l-e-s. LB654 requires that each candidate for President and Vice President who wishes to appear on the general election ballot in Nebraska submit a sworn affidavit stating he or she meets the requirements of Article II, Section 1 of the U.S. Constitution. This section of the Constitution of the United States reads, "No person except a natural-born citizen or a citizen of the United States at the time of the adoption of this constitution shall be eligible to the office of President." The other, "Shall any person be eligible to that office who shall not have attained to the age of 35 years and been 14 years a resident within the United States." The bill also requires each candidate to provide documentation supporting the affidavit and makes the affidavit and documentation available for public inspection. LB654 requires the Nebraska Secretary of State to determine each candidate's eligibility based on the submitted affidavit and documentation and to certify and place on the general election ballot only those candidates who are eligible to hold such offices according to the requirements of the U.S. Constitution. The bill provides for an appeal process by which a candidate or registered voter can challenge the Secretary of State's decision. It also provides for the certification of successful write-in candidates. LB654 also requires Nebraska's presidential electors to vote only for candidates who have been certified as eligible by the Secretary of State. I believe LB654 will instill a greater confidence in the election process by assuring voters that candidates for the highest office in the land have been properly vetted by government officials as to their constitutional eligibility. No such process currently exists on the federal or state level. I think a lot of people were surprised to find out during the 2008 election that there is no formal vetting process verifying eligibility of President and Vice President since we require verification in other areas. My primary reason for introducing LB654 is that I believe some type of process should be in place to ensure that constitutional eligibility requirements for the offices of President and Vice President are upheld and the rule of law followed. Since the states

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Government, Military and Veterans Affairs Committee
March 10, 2011

have been delegated the responsibility to run the national elections, it seems to me logical that a verification process be set up in the states. There are ten other states, from Texas to Connecticut and Maine, who are looking at eligibility bills. Georgia is one that looks like it may have...it's moving forward and also Arizona. Whether this bill is in the form that this committee wants is not as important to me as having some verification process. I think most people are agreeable to the verification process because we are required to verify who we are to prove our citizenship and our age, among other things, to be eligible for many privileges throughout our society. The problem or controversy arises when one of the three eligibility requirements, that of being a natural-born citizen, is addressed. This is the only place where this term is used for the eligibility of the President and Vice President. Congressional representatives and Senators are only required to be citizens in the U.S. Constitution, not natural-born citizens. Obviously, our Founding Fathers meant to make eligibility for the President a higher standard. Though there is not much discussion about what our founders actually meant by this phrase in historical documents, there is some indication that the primary reason was to make a hurdle against someone rising to be Commander in Chief of our military who could potentially have a foreign allegiance or sympathies. A letter from John J. to George Washington speaks to that possibility during the crafting of the constitution. Again, most of us can understand that concern. But the question boils down to whether natural-born means born of two citizen parents on U.S. soil, which there would be no question that you were a natural-born citizen with no foreign loyalties or whether our founders only meant that natural-born means you were born in the U.S. or, to confuse the issue, did the Fourteenth Amendment to the constitution clarify natural-born citizen or just citizen? This question in many people's minds has not been formally decided or fully discussed in the courts, which creates the controversy. This bill was drafted in a way to press this discussion. I, personally, could live with either interpretation and I believe it is an important discussion. There has been a lot of this discussion in the news lately. Many of you probably want to know where Senator Christensen stands on some of those questions. He, personally, doesn't perceive this...wants this to be an attack on President Obama. And so he would be fine if this particular bill would be pushed back so it would

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Government, Military and Veterans Affairs Committee
March 10, 2011

not go into effect until after the 2012 election. He doesn't want it to be perceived that it's an attack on him. He wants a process to have a greater integrity within the election process. He assumes and goes by that President Obama is most likely is a...was born in Hawaii and is a citizen of this country. He does not want that to be the side, you might say, side show. He would rather us look at whether we can craft some type of process that would give people security in believing that we've done our job vetting who can be eligible for President according to the constitution. With that, I think we will call it good. And if you want to ask questions, I'll try to answer them. [LB654]

SENATOR AVERY: Well, customarily we don't ask staff to field questions. But if you wish to, I'm sure we could fire a few at you. (Laugh) But customarily we don't do that. Thank you for your testimony. [LB654]

DAN WILES: Thank you. [LB654]

SENATOR AVERY: Proponent testimony. Anyone here wishing to testify in support of LB654? Good afternoon. [LB654]

KATHY WILMOT: Good afternoon. My name is Kathy Wilmot, K-a-t-h-y W-i-l-m-o-t and I won't be shy about going less than four minutes. I would like to voice my support for such a bill. I think as a citizen, since I only get one vote every four years for President, I would certainly want to make sure that it was going to someone who was constitutionally qualified to be President of our great nation. And I think it's good to get a system in place before maybe we really have a question that does surface here for us as voters here in Nebraska. And so I would ask you to support that. That's it. [LB654]

SENATOR AVERY: Thank you. You are very brief. You want to wait and see if we have any questions. Any questions of this testifier? Okay, thank you. [LB654]

KATHY WILMOT: Thank you. [LB654]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Government, Military and Veterans Affairs Committee
March 10, 2011

SENATOR AVERY: Any other proponent testimony? Good afternoon. [LB654]

NELLIE RISTVEDT: (Exhibits 2 and 3) Hello. My name is Nellie Ristvedt, N-e-l-l-i-e Ristvedt, R-i-s-t-v-e-d-t, and I'll probably take her time that she didn't take. (Laugh) I'm just representing myself. Some of this has been said already but it bears repeating. New Jersey law requires their Secretary of State to verify constitutional eligibility of Presidential candidates before placing them on the ballot. The requirements for the constitution has already been stated. In 2008, the New Jersey Secretary of State placed those three candidates...placed three candidates on the ballot: John McCain, who is a white Republican who was not born in the United States; Barack Obama, who is a black Democrat whose father was not a U.S. citizen; and Roger Calero, who is a Hispanic communist who was not born in the U.S., whose parents were both noncitizens and who is not himself a U.S. citizen. A concerned citizen, Leo Donofrio, sued to have New Jersey law upheld, saying that the constitutional eligibility of all three candidates was legally uncertain. The courts ruled that he had no legal standing, that it was not his business whether or not either New Jersey law or the U.S. Constitution had been violated. The Supreme Court can take up a case regardless of standing, but declined to hear that case or any of the 50-plus cases regarding eligibility. This case tells us a few things. First, it tells us that this is not about political party, since the candidates for three parties were challenged, nor is it about race, since those three candidates were of three different ethnicities. The issue is the rule of law at both state and federal levels, involving state statutes and the United States Constitution. Second, it tells us what doesn't work. Only statutes that require specific documentation and what it needs to document means anything, and only statutes which gives citizens standing to sue will ever actually be enforced. The reason LB654 is necessary is because of the confusion over whose business Presidential eligibility is. For brevity, I've written up a series of headlines to concisely show the current situation: U.S. Constitution: President Must be Natural-Born Citizen; Congressional Research Service: Eligibility Is State's, Congress and Courts' Business; Congress: It's State and Court Business; states: It's Congress

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Government, Military and Veterans Affairs Committee
March 10, 2011

and Court Business; lower courts: It's Nobody's Business; Judge Robertson: It's Twitter's Business; Supreme Court: No Comment; Secretaries of State: Everybody is Eligible; media: If We Don't Report It, You're Crazy to Care About It; and the current Nebraska statute: Trust Politicians and Media. Sounds just like my kids when it's time to sort the laundry, always somebody else's business so nobody gets it done. Except in this case, the only people who can interpret the constitution are the courts and they refuse, and the only people who want to enforce the constitution are the people, and the courts won't even let them raise the issue, saying they lack standing. LB654 would create a case with standing so the courts can rule on the definition of natural-born citizen. Any arguments saying that LB654 is unconstitutional miss the key point which is the only way we will get a definition for natural-born citizen is if there is a law or a candidate that is challenged in the courts. There is every reason in the world to believe that LB654 is constitutional, though, because the legal source which defined natural-born citizen when the constitution was ratified, that's de Vattel, said, a natural-born citizen is someone born on the country's soil to citizen parents. Even seven years after the Fourteenth Amendment was ratified, the Supreme Court said that any other definition would be questionable because it is not known whether children born to noncitizens are "subject to the jurisdiction of the United States," as required by the Fourteenth Amendment or to the country of their parents' citizenship. And, indeed, when the United States Senate unanimously passed a nonbinding resolution declaring John McCain a natural-born citizen, even though born in Panama, they based that on him having two citizen parents. So those who say that parents' citizenship is only an issue for the fringe of the fringe will be happy to know that the fringe of the fringe includes all 100 Senators in 2008, including Barack Obama, his current Vice President, Joe Biden, and his current Secretary of State Hillary Clinton. I've written up a booklet which gives details. I sent this booklet out to each of the committee members ahead of time because it has a lot of important information. It addresses the constitutional issues that have been raised and why, I believe, LB654 is constitutional in every way. And I'll entertain questions about that, if you have them afterwards. Ultimately, the only parts of LB654 that will survive are those which pass constitutional muster, which will leave us with a

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Government, Military and Veterans Affairs Committee
March 10, 2011

definition of natural-born citizen and the means to implement that definition in the state of Nebraska, which is exactly what we need if we are serious about defending the United States Constitution. One state to our south, a decorated Iraq war vet sits in jail because his officer's oath to protect and defend the United States Constitution would not allow him, in good conscience, to say, it's somebody else's business. His oath meant something to him. Regardless of what anybody thinks of how Lieutenant Colonel Terry Lakin chose to protect the U.S. Constitution, nobody should question how much his oath meant to him. He gave up \$800,000 of his personal savings, the rest of his career as a military surgeon including benefits, and a comfortable military retirement, easily adding up to \$3 million. Trying to uphold his oath also cost him his reputation and six months in prison. Defending the United States Constitution was worth that much to him. His Commander in Chief could have spent two minutes authorizing the release of records he claimed to have already disclosed and put Lakin's conscience at ease. Apparently, it wasn't worth two minutes of the Commander of Chief's time. And now the question that I place before this committee is this: How much is your word worth? When you made the oath to support the United States Constitution, did you mean it or are you expecting somebody else to do it for you? The way you vote today will answer that question. And you have a fantastic opportunity to stand up for the United States Constitution. [LB654]

SENATOR AVERY: Thank you. Questions from the committee? Senator Schumacher. [LB654]

SENATOR SCHUMACHER: Thank you, Senator Avery. I'm kind of interested in your discussion on standing. How can a state Legislature grant standing to someone in a federal case in the federal courts? [LB654]

NELLIE RISTVEDT: Well, by virtue of passing this law, if this law is passed it will be challenged on constitutional grounds. We know that the Department of Justice will challenge this. That by itself will create a case where there is standing for the courts to

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Government, Military and Veterans Affairs Committee
March 10, 2011

take this up. So...and if the law says that it is somebody's business, just like in the previous case that you had here where the law gets to say whether somebody gets to see these records, these accident reports, they have standing to see these accident reports, well, the same thing. If the law says that a person has the right to sue or to challenge a decision of the Secretary of State, then that citizen has that legal ability. [LB654]

SENATOR SCHUMACHER: But that would be a suit on our law in Nebraska courts. [LB654]

NELLIE RISTVEDT: Right, um-hum. [LB654]

SENATOR SCHUMACHER: And we don't rule the world. [LB654]

NELLIE RISTVEDT: That's right, but we do rule Nebraska. And the way that it would get into the federal court system is on appeal because the federal courts have the jurisdiction to appeal state...to take appeals in which states are a party. So if someone sues the Secretary of State, that is a case where the state is a party and that gives it federal jurisdiction. [LB654]

SENATOR SCHUMACHER: But if our Supreme Court rules one way or the other and somebody wants to appeal it, it has to go up on cert. to the federal Supreme Court. And the federal Supreme Court may not care to hear it, may not grant cert. [LB654]

NELLIE RISTVEDT: If there has been a decision in a case, and the federal courts refuse to hear an appeal, then their refusal to hear the appeal is basically agreeing with the previous decision. [LB654]

SENATOR SCHUMACHER: The Supreme Court is under...the U.S. Supreme Court is under no obligation to take a case on cert. [LB654]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Government, Military and Veterans Affairs Committee
March 10, 2011

NELLIE RISTVEDT: On what? [LB654]

SENATOR SCHUMACHER: Certiorari, it's a... [LB654]

NELLIE RISTVEDT: Right, that's right, they don't have to do that, um-hum, right.
[LB654]

SENATOR SCHUMACHER: They don't have to. So we still don't get into the federal courts if they don't want us in the federal courts. [LB654]

NELLIE RISTVEDT: But they have the option of taking it. And if they refuse to take it, at that point, if there's been a decision that's been made and the federal courts refuse to take it up, then that is the federal courts saying that they will let that previous decision stand. And it's been reported in the media that the Supreme Court has let lower decisions stand. The only decision that the lower courts have made in any of these cases is that it's nobodies business. There has not been a ruling on the merits of any case. [LB654]

SENATOR SCHUMACHER: Thank you. [LB654]

SENATOR AVERY: You apparently are a student of American history. Are you aware that Alexander Hamilton would not have been eligible to run for President under these rules? [LB654]

NELLIE RISTVEDT: For me, I don't really care who is eligible and who isn't. It's really not about that. For me it's, for instance, I noted in here that John McCain, we don't know if John McCain was eligible. I was given nobody on the last ballot that I could vote for that I knew was constitutionally eligible, nobody. I don't care if John McCain is ruled ineligible. I don't care if Barack Obama is ruled ineligible, I don't care if Roger Calero is,

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Government, Military and Veterans Affairs Committee
March 10, 2011

I don't care if Marco Rubio is, I don't care if Bobby Jindal is. This issue is not going away. It's not about one person. It's about a process. It's about the constitution being followed and where the chips fall I don't care as long as the rule of law is followed, that is my only concern. [LB654]

SENATOR AVERY: I don't see any more questions. Thank you. [LB654]

NELLIE RISTVEDT: Thank you. [LB654]

SENATOR AVERY: Oh, I'm sorry. I didn't see, Senator Brasch has a question. [LB654]

SENATOR BRASCH: Thank you, Chairman. I'm curious here when you're saying you don't care,... [LB654]

NELLIE RISTVEDT: Um-hum. [LB654]

SENATOR BRASCH: ...your reason for bring this is to correct the constitution, change the constitution? What are you asking for here? What would you like to see happen? [LB654]

NELLIE RISTVEDT: I would like to see us establish a process so that the provisions of the constitution are actually followed. Right now that isn't happening. Someone who is not even a United States citizen made it onto the ballot. [LB654]

SENATOR BRASCH: And you say you are representing yourself here. [LB654]

NELLIE RISTVEDT: Um-hum. [LB654]

SENATOR BRASCH: Are you professionally affiliated with any organizations or groups? [LB654]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Government, Military and Veterans Affairs Committee
March 10, 2011

NELLIE RISTVEDT: No. [LB654]

SENATOR BRASCH: And you produced a wonderful booklet, it looks very professional and finished. [LB654]

NELLIE RISTVEDT: Thank you. [LB654]

SENATOR BRASCH: You know, it's part of an occupation or a... [LB654]

NELLIE RISTVEDT: No, no, it's not. I'm a housewife and I started investigating this just because I wanted some answers in my own mind. The media had said certain things and I thought, well, you know, if that's the case then check it out and see if it checks out. And I started contacting people and trying to get answers. And I started a blog, actually, talking about the things that I found. What actually concerned me about this issue was when I saw the amount of lawlessness that has been going on in dealing with this issue. There is an incredible amount of lawlessness that's going on in all of the bureaucracies in all of the processes, and I mention that in the booklet. And I hope that you have a chance to look at this. This is not about any particular person or anything like that. But what I've seen in the government itself really, really concerns me. There are really critical instances of lawbreaking by government officials that have gone on in this issue. [LB654]

SENATOR BRASCH: Thank you very much. [LB654]

NELLIE RISTVEDT: Um-hum, you're welcome. [LB654]

SENATOR AVERY: Senator Price has a question. [LB654]

SENATOR PRICE: Chairman Avery, thank you very much. Ms. Ristvedt, thank you for

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Government, Military and Veterans Affairs Committee
March 10, 2011

coming, for your testimony and preparing it so well. In Senator Brasch's question to you about what your goal was, I had thought I had heard what your...it seemed that one of the goals is to get it challenged in court, to get a standing in court. [LB654]

NELLIE RISTVEDT: Um-hum. [LB654]

SENATOR PRICE: Okay. So notwithstanding the values of the or the merits thereof, what you're asking us to do is to set up a situation where we have to go to court and defend something and then obligate the state to dollars. So there is an agenda beyond following a process. The agenda is to have the state have to defend and spend dollars on something to get something at a federal level, which 50 other cases aren't being heard. So it's a 50-50 chance that you get a statement on a ruling. So I just want to make sure I'm clear. The issue is you want the state to have to defend something and spend dollars on the hopes that the federal court might and the Supreme Court might make a ruling that is favorable to your disposition? [LB654]

NELLIE RISTVEDT: Basically, yes. And the reason that I say that is because we have an Attorney General who right now is challenging the federal healthcare bill. And so we have these challenges that get made. I don't think that a veteran of the Iraq war should spend \$3 million of his own dollars to make sure that we have a process to verify and to get a legal definition. I don't think that any one citizen should have to do this. We have federal tax dollars that have been spent arguing these cases, these 50-plus cases. That's coming out of Nebraska taxpayer dollars as well. And I think that if we create a situation where we make that initial investment of making sure that we have a definition, a legal definition that every state in this country needs to have, I believe that's a wise investment because it means that we won't be having these lawsuits on other scores. And it increases the accountability of the government, it increases the citizen's perception that it is not a lawless process, that they do have the ability to hold lawmakers and bureaucrats accountable to the rule of law. And I think that is worth far more than whatever cost it would take to have our Attorney General argue the case.

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Government, Military and Veterans Affairs Committee
March 10, 2011

[LB654]

SENATOR PRICE: So then it becomes a transparency issue also. [LB654]

NELLIE RISTVEDT: Definitely a transparency issue. [LB654]

SENATOR PRICE: Thank you. [LB654]

SENATOR AVERY: I don't see any more questions. Thank you. [LB654]

NELLIE RISTVEDT: Thank you for letting me testify. [LB654]

SENATOR AVERY: Any other proponent testimony? All right, we'll move to opponent testimony. Anyone wish to testify in opposition? [LB654]

NELLIE RISTVEDT: Oh, excuse me. There's written testimony. [LB654]

SENATOR AVERY: We have that. [LB654]

NELLIE RISTVEDT: Okay, okay. [LB654]

SENATOR AVERY: Welcome, Mr. Hedrick. [LB654]

RICHARD HEDRICK: Don't need to spell my name again. (Laugh) [LB654]

SENATOR AVERY: Okay. [LB654]

RICHARD HEDRICK: I got a different view of life than the previous testifier. I'm against LB654. I look at this bill, by my experience, that the bill was designed to pacify those now who are called "birthers." Obama has a Hawaiian birth certificate. "Birthers" have

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Government, Military and Veterans Affairs Committee
March 10, 2011

been promoted by the view that Obama was not born a citizen, led by Fox News and other Pied Pipers. If you remember, the story of the Pied Piper, you know the drill. "Birthers" are being led for the same reason the children of the Pied Piper was leading them, working for hay, no free lunch. The last two years, we have been bombarded by references to Hitler, (inaudible), by people who were not there, do not know what Hitler was about, they haven't studied it. The Pied Piper did not tell the truth to the children being led. What happened in Michigan reminds me, after being reminded all the time about Hitler, how Hitler took over the Reichstag. The industrialists were behind Hitler. The industrialists were behind Walker. Parables reminds me that Fox News is a propaganda machine that (inaudible) would have been like to been after. They are blasting the Muslims. Hitler promoted the Aryan race and demonized the Jews. We do not need LB654 or other such laws cluttering up the Nebraska Revised Statutes. State laws are more sacred. Thank you. [LB654]

SENATOR AVERY: Thank you, Mr. Hedrick. Questions from the committee? I don't see any. Thank you for coming in. Any more opponent testimony? Anyone...are you wishing to testify in opposition? [LB654]

AARON HRABA: Yes. [LB654]

SENATOR AVERY: Okay. [LB654]

AARON HRABA: I'm sorry about the T-shirt. [LB654]

SENATOR AVERY: No, that's okay. We don't have a dress code, actually. Well, I guess, we would if you came in, in shorts. [LB654]

AARON HRABA: Well, next time, I'll have a tie. I apologize. My name is Aaron Hrabá, last name is H-r-a-b-a, and I'll be quite brief. I'm really kind of nervous, sorry. I just...it's been kind of brought to my attention. I just moved back to the beautiful state of

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Government, Military and Veterans Affairs Committee
March 10, 2011

Nebraska where I was raised. And through the paper and my family found out about this. And I just wasn't too clear why the parents' birth certificate is coming into play. From what I know, what little I know about the constitution, it's the person that is running, that they are...and I just think that it's...there's maybe a little bit...some of the comments of the gentleman who presented the proposal, his aide, I forget his name, I'm sorry, seemed like he alluded to the fact that Obama may not be a citizen. And whichever way you lean, at least I do, I support who's in power. I might question them, but I think this is a little bit of...kind of some dirty tricks against Obama. And I'm not being very articulate and I'll just sum it up now. But I just wanted to be on the record saying that I was opposed. [LB654]

SENATOR AVERY: That's why we have public hearings. [LB654]

AARON HRABA: Okay, thank you. [LB654]

SENATOR AVERY: Thank you. Thank you for coming forward. Wait just a minute, we might have some questions for you. [LB654]

AARON HRABA: Okay. [LB654]

SENATOR AVERY: Any questions from the committee? Thanks for coming forward. [LB654]

AARON HRABA: Thank you. [LB654]

SENATOR AVERY: Any other neutral testimony? Okay, Mr. Wiles, I'm going to give you an opportunity, if you want, to make some closing comments. [LB654]

DAN WILES: The only thing I think I just wanted to make clear and Senator Christensen wanted you all to understand that he isn't attacking President Obama. He's willing for

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Government, Military and Veterans Affairs Committee
March 10, 2011

any type of verification bill that you would feel appropriate to go into effect after 2012. So this would not...he's willing to do that because that's not his purpose. His purpose is to have some type of verification process to...so that people can know that there's some integrity in following the constitution so. Just wanted to make that reiteration. [LB654]

SENATOR AVERY: All right, thank you. That ends of the hearing on LB654. And we'll now move to the final item on our agenda, LR22, and invite to the table Senator Fulton. Welcome, Senator Fulton. [LB654]

SENATOR FULTON: (Exhibit 1) Thank you, Mr. Chairman, members of the committee. Just situate myself, forgive me. Okay. Thank you, Mr. Chairman. For the record, my name is Tony Fulton, T-o-n-y F-u-l-t-o-n. And I represent District 29 here at the Legislature. I bring you LR22 which proposes Nebraska's adoption of the repeal amendment to the United States Constitution whereby any legislative act by Congress or regulation promulgated by a federal agency could be repealed by the several states. Similar proposals are being introduced or contemplated in at least a dozen states. And the repeal amendment was introduced in the U.S. House during the previous Congress. It probably goes without saying before this committee but, Article V of the constitution lays out the two means by which that crucial document, our constitution, may be amended, either by both houses of Congress, which must have passed the proposed amendment or two-thirds of the states must call for a Constitutional Convention. And in either case, three-quarters of the several states must ratify the amendment. So last year, I brought forward the sovereignty resolution, LR292, and later LR539. And I thank this committee for hearing that and moving it forward. And we were able to pass it in the Legislature. And my purpose there was to give voice to many Nebraskans who had become interested in government, myself included, interested in government, the constitution and this balance that separates the powers of our governments, and also it allowed for us legislators to recognize sovereignty as our articulated for the state of Nebraska in the Ninth and Tenth Amendments to our constitution. The actions of our federal government affect all of us, that goes without saying, but it's worth noting where

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Government, Military and Veterans Affairs Committee
March 10, 2011

we find ourselves. And I recognize that these can always be construed as partisan endeavors. It's important to point out that Republicans and Democrats worry about our debt, which, according to the U.S. debt clock, is around \$14 trillion now, which is not even to touch on the unfunded obligations that we face, \$112 trillion. This affects us, it affects us in the way that we set our budgets through the appropriations process at the state level. It certainly affects us in state government and it affects our citizens. Nebraskans are rightly concerned about the powers of the federal government and how they can encroach upon the states. And I, as a state senator, have taken this concern up, actually not by plan, but I found myself backing into it and have found great interest in its pursuit. So last year's resolution provided an opportunity for education and dialogue about our constitution and a balanced federalism. This, the repeal amendment, LR22, keeps a very important conversation going about our constitution. The measure, at a minimum, furthers the discussion about balanced federalism and the fundamental concept of dual sovereignty. I'm going to give you some citations here. A balanced federalism in a dual sovereignty, as articulated by Supreme Court Justice Anthony Scalia, in Prince v. United States, 1997, it's incontestable that the constitution established a system of dual sovereignty. Although the states surrendered many of their powers to the new federal government, they retained a residuary and inviolable sovereignty, which was Scalia quoting "The Federalist Number 39," James Madison writing. In this relation then, the proposed government cannot be deemed a national one since its jurisdiction extends to certain enumerated objects only and leaves to the several states a residuary and inviolable sovereignty over all other objects. Thank you. There also is recognized a balance of powers, which I believe would be contemplated under this resolution. In New York v. United States, 1992, the constitution protects us from our own best intentions. Thank you, my fiend. It divides power among sovereigns and among branches of government precisely so that we may resist the temptation to concentrate power in one location as an expedient solution to the crisis of the day. This resolution would give legislators such as ourselves and perhaps others an opportunity to consider our constitutional role. The founders anticipated the potential necessity for state legislatures to invoke an Article V Constitutional Convention as their duty in

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Government, Military and Veterans Affairs Committee
March 10, 2011

protecting their state and constituents against encroachment by federal government. I submit that because it exists. Now there is...I've been working with citizens on this. And the prospect of nullification laws was brought up to me. And I have not gone into too much detail studying this, but a little bit. And so I think it's important to say this. I've heard from many Nebraskans who have put forward a number of ideas with how to deal...concerning how we could deal with the growth of the federal government, the deficit and a number of other things. And you've probably received many of the same e-mails that I have. They wish to see Nebraska's elected officials exercise their authority as provided by the constitution. And I could give you some of the examples of some of the letters and e-mails, but I'm sure you've seen some of them. We all received a book, called Nullification by Thomas Woods, which I've seen advertised nationally and which I've started to read. This...the repeal amendment provides an alternative to that concept. This was pointed out to me by a constituent worth mentioning. This repeal amendment would work in concert with the powers granted to us by the constitution in allowing us to restore the state's role in a balanced federalism, recognizing still the separation of powers. The amendment that I've passed out to you is really done to address a concern that many have posed to me, that we would have a runaway Constitutional Convention. The amendment, if you'll take a look at it, has...it provides that the Congress calls on members of our delegation within Congress to put forward the repeal amendment. And if that should not work, then a Constitutional Convention could be convened with specificity in our resolution, and I'll read into the record that the Nebraska delegation to such convention when called shall propose the amendment articulated, the repeal amendment, articulated in paragraph one and that this resolution is revoked and withdrawn, nullified and superseded to the same effect as if it had never been passed, retroactive to the date of passage, if it is used for the purpose of calling a convention or used in support of conducting a convention to amend the Constitution of the United States for any purpose other than consideration of the amendment proposed in this resolution. So I'm going to deviate from script here and just tell you that this isn't something that I came into the Legislature thinking I would address. But it is something that has come to my attention because of what's going on in the federal government.

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Government, Military and Veterans Affairs Committee
March 10, 2011

And this is not something that has occurred, I think, in recent years, but, as I said last year, it's occurred over the course of many years. Who better to stand up for states' rights and state sovereignty than a state legislator. So this is an idea that has got some traction in different parts of the country. And I brought it forward for some discussion. So I'll close there and see if you want to discuss. [LR22]

SENATOR AVERY: Okay, thank you, Senator Fulton. Let me ask you, would you be willing to allow counties in the state of Nebraska to do something similar if they didn't like some of the laws we passed? [LR22]

SENATOR FULTON: Would I be willing to or do they have the authority to? [LR22]

SENATOR AVERY: They don't have the authority now to... [LR22]

SENATOR FULTON: Yeah. I would say that if...I would not. And the reason why is because I think I've...that's all right, I'll say it again. The counties aren't sovereign. The counties exist as political subdivisions of the state of Nebraska. And so... [LR22]

SENATOR AVERY: Created by the constitution. [LR22]

SENATOR FULTON: True. But they are not sovereign entities, counties, nor cities, nor NRDs, nor school boards, and that's why we have the authority to adjust accordingly what goes on at local units of government. So I recognize this general principle of subsidiarity. It's attractive and should apply to counties, cities and whatnot, principle of local control. But to repeal, if the counties were to gather and repeal a law promulgated by state government, they don't have that authority. [LR22]

SENATOR AVERY: So then in state government who is sovereign? [LR22]

SENATOR FULTON: What's that? [LR22]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Government, Military and Veterans Affairs Committee
March 10, 2011

SENATOR AVERY: You said that counties are not sovereign and cities are not sovereignty, right,... [LR22]

SENATOR FULTON: Right. [LR22]

SENATOR AVERY: ...in state government? Where is sovereignty in state government? [LR22]

SENATOR FULTON: Ah, good question. Thank you for asking. My understanding is that the people are sovereign and the way that the people assemble is expressed through their Governor or through their state Legislatures. But, I guess, my response to that is it is the people who are sovereign. That sovereignty exists through a political identification which we know is the state of Nebraska. But that's the difference between a sovereign before in...you know, before our country was founded, the sovereign subsisted within the person of the king. And now in our form of government the sovereign subsists in the persons of the citizenry. And so my philosophy may be off on that, but I would answer your question... [LR22]

SENATOR AVERY: No, you're right. [LR22]

SENATOR FULTON: ...by saying it's the people. [LR22]

SENATOR AVERY: You're right. He whose right it is to do as a definition and that in a democracy it is the people. But we delegate authority to our governments. So, I mean, there isn't much difference between that at the state level and what you're trying to do at the federal level. [LR22]

SENATOR FULTON: Understood. The only difference here is that I'm looking to the federal...the constitution of our country to provide that authority by which we could

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Government, Military and Veterans Affairs Committee
March 10, 2011

invoke or create this repeal amendment. And, I mean, I understand. This is quite an idea. And I'm not...this isn't a priority bill. I understand what we're asking to do here. But it's worth noting. I mean, if we in the states don't like something that happens at the federal government we do have within our authority to act. And there are different ideas, as I said, that are out there, this idea of nullification and whatnot. But this is a little different idea. I've talked with some citizens. I think one of the ladies I've talked with on this and worked with on this is here today and will probably testify. This is, it's intriguing to me because it's been envisioned by people before us. [LR22]

SENATOR AVERY: But we elect our representatives and we...they represent us in Congress. They have...there is a constitutional means by which you can get laws changed... [LR22]

SENATOR FULTON: Right. [LR22]

SENATOR AVERY: ...through the representative form of government. And that's insufficient? [LR22]

SENATOR FULTON: In my opinion? [LR22]

SENATOR AVERY: Yes. [LR22]

SENATOR FULTON: Yes. [LR22]

SENATOR AVERY: And why is that? [LR22]

SENATOR FULTON: Well, I'll point to the healthcare bill that was not popular when it was passed. I don't know what polling says now. But I can say that within state legislatures, I mean, you're hearing from the same folks that I'm hearing from. We would like to have put a stop to it. I mean, here I can tell you what it does to our budget, which

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Government, Military and Veterans Affairs Committee
March 10, 2011

is something that I have direct responsibility for, as do all of us here. You know, that's something that's going to be very difficult to undo. And the typical political process, while appropriate in 99 percent of the cases, if the people would like to appropriate that power through their state legislatures, that's where this repeal amendment would come in.

[LR22]

SENATOR AVERY: So is that the origin of this, the healthcare bill? [LR22]

SENATOR FULTON: I wouldn't say it's the origin of it. And I'm being honest there, it's not the origin of it. This was actually...I've...my nighttime reading has changed over the course of the past couple of years. And I've been reading more about ideas about our constitution, how we have chosen to govern ourselves. And this was brought to me originally in one of the e-mails I received from one of the groups out on the coast that has this repeal amendment. They have a Web site out. I've since talked with some citizens here who had expressed a similar interest. That's one example where I, personally, have a problem. There could be others that some others have a problem in. But we're talking about getting, you know, a majority of the states put together to repeal something that the federal government has put forward. And if we express ourselves with a balanced federalism, as I believe we as a nation do, then I think this is an appropriate power for us to consider. [LR22]

SENATOR AVERY: We have here in Nebraska the initiative process which is a way to repeal laws that the voters don't like. Why not go that direction and have the constitution amended to include a national referendum? [LR22]

SENATOR FULTON: It's a potential. Maybe next year. It's a potential. But this is something that has been envisioned before. James Madison, I think I quoted here earlier, but it's been envisioned by people before us, by some of the founders. And it's an idea anyway that makes some sense to me. The Constitutional Convention, frankly, I have a little bit of concern with that also. But I look to the Fifth...Article V of the

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Government, Military and Veterans Affairs Committee
March 10, 2011

constitution and the two mechanisms by which one could invoke this repeal amendment, just working with what's given to us. [LR22]

SENATOR AVERY: There are about 12 other states looking at something similar. [LR22]

SENATOR FULTON: I think so. I don't have them with me, but I could go back and find them. This is something where it has some traction now. And I think it has something to do with this interest in the Tenth Amendment and recognizing that there is a balanced federalism within our way of government. And so state senators, I mean, that's whose introducing these things, state legislators, we've awakened. And so this is occurring in other states too. To what end, are they going to be successful? I don't know. [LR22]

SENATOR AVERY: I think a lot of us are concerned about laws that are passed by the federal government that have an impact on states over which we have little...no control. And just to give you one example of that, the last, in December, Congress passed a law to extend the Bush tax cuts. Included in that was a very generous new provision of bonus appreciation for business equipment, 100 percent in one year. It's going to cost the state of Nebraska, because we're coupled to the federal tax code, about \$63 million in one year. [LR22]

SENATOR FULTON: Is that what it is? [LR22]

SENATOR AVERY: Yeah. Now where is the outrage about the unfunded mandate in that? We would have had a forecast of \$107 million in the last forecast, in February, were it not for that bonus depreciation that we did not talk about in our Legislature and we did not vote on it, but yet we're being affected by what happened at the federal level and nobody seems to mind it. [LR22]

SENATOR FULTON: Senator Avery seems to mind it. [LR22]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Government, Military and Veterans Affairs Committee
March 10, 2011

SENATOR AVERY: He does. And I took a bill to the Revenue Committee about it. But they don't seem to care. [LR22]

SENATOR FULTON: That would be an example. That's a good...you know, every one of us is going to have some particular axe to grind with what happened in Washington. With this, there would have to be a majority of states, okay, that would have this. You know, ultimately it's going to have to be approved by three-quarters of the states. I mean, if we were to appropriate this power to the states, and so we would have to...getting three-quarters of anyone to agree on anything is... [LR22]

SENATOR AVERY: That's 34 votes. [LR22]

SENATOR FULTON: What's that? [LR22]

SENATOR AVERY: Thirty-four votes, 34 states. [LR22]

SENATOR FULTON: States. [LR22]

SENATOR AVERY: Yeah. Questions from the committee? Senator Karpisek. [LR22]

SENATOR KARPISEK: Thank you, Senator Avery. Thank you, Senator Fulton. I'll keep it short. I'm going to tell you the same thing I tell you every year on this. If I bring a...could we change the constitution of the state to make the counties and the cities sovereign? [LR22]

SENATOR FULTON: Could we change the constitution to make counties sovereign? I don't believe that we could. Sovereignty was appropriated...again, I'll get philosophical here. I could be completely wrong but this is how I thought through it. Rights are granted to people and the inalienable rights were granted to people by our Creator. Now that

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Government, Military and Veterans Affairs Committee
March 10, 2011

was true whether we encapsulated it in our founding documents or not. And the way that we've chosen to appropriate this individual sovereignty is through the makeup of governments. First states, and then the states as sovereign entities allowed for the federal government to be created, itself a nation and therefore sovereign. So I don't know that it would be possible for us to give the counties the authority to be sovereign, any more than we could tell a person that now you get inalienable rights, they existed. So I could be wrong about that. That's just a good question, I mean... [LR22]

SENATOR KARPISEK: Well, and you know how much it bothers me that we push things down onto cities and counties but we continually complain about the federal government. And I'm sorry, you say it's not partisan, it sure smells partisan, Senator, because I haven't seen you here before with these in the last two years. Now I don't care. You know that I'm probably as middle of the road as it gets around here but it seems that way. And I'm sorry I'm in a foul mood this afternoon because of some of the other bills we've had. And this one always gets my goat too. I don't like what they do, you know that, I don't like what they do to us. But I don't like what we push down, but yet you always say, well, it's a sovereignty issue. I mean, it's the fallback issue, but it never seems to...it's philosophical and all those things. But to me it's not common sense to say we don't like what they do to us, but we're going to do it to them. [LR22]

SENATOR FULTON: It's fair. Like I said, this principle of subsidiarity, I mean, I learned this some years ago and, you know, I didn't like learning it some years ago, but it stands...it rears itself over and over, particularly in government. Those who are closest to a problem are the ones best equipped to deal with that problem. That's a powerful thing. But it's just a matter of fact that Nebraska exists as a...it's a sovereign state, it's an entity for itself. We have our sovereignty separate, distinct from the federal government. But that's not the case with the cities and counties so. [LR22]

SENATOR KARPISEK: But could you not at least agree or can you even see any similarity there? [LR22]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Government, Military and Veterans Affairs Committee
March 10, 2011

SENATOR FULTON: I can. I do. And I will say that I don't know what the percentage is, but maybe half the time I have a problem with something that we do up here because of the way it's going to affect the governments up here and I'll vote accordingly. But the reason why is because of a matter of judgment or prudence. This is not an appropriate action for us to take because of what it does to the governments here. It's not because, well, they're sovereign, we have no right to tell them. It's just it's different for me anyway. I mean, your argument has sway because of this principle of subsidiarity. So, I mean, then it just becomes a matter of judgment. And when should we say that the cities need to do this or that the cities can't have this taxing authority or that the cities can't have that taxing authority that's a judgment call. Whereas, if the federal government were to say, oh, Nebraska, you should do this, that or another with your income tax or your sales tax. They have no right to do that. So at least for me anyway there's the difference, sovereignty versus a matter of judgment. [LR22]

SENATOR KARPISEK: And I have been with you on this issues because it gives me a podium to complain about what we do to the cities and counties. [LR22]

SENATOR FULTON: Yeah. [LR22]

SENATOR KARPISEK: Thank you. [LR22]

SENATOR FULTON: Thank you, Senator. [LR22]

SENATOR AVERY: Senator Schumacher. [LR22]

SENATOR SCHUMACHER: Thank you, Senator Avery. This is just too much fun not to get involved in. (Laughter) A couple of things, Senator Fulton. You mention that you think the language protects us from an open Constitutional Convention. Generally, once convened that convention is the ultimate law and you can't revoke its authority once

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Government, Military and Veterans Affairs Committee
March 10, 2011

convened. I think it's prevailing opinion, you can't say, ah, you're convened, you're the supreme authority, and oh, by the way, if you do something you're "unconvened."

[LR22]

SENATOR FULTON: Yeah. That's, like I said, I have some concern about this also. By putting forward this language those of our delegates who go forward would be operating under the powers of our Legislature. And so that's...and I understand there's an argument to be made here. But that's why I put this language in. I think it's page, yeah, it's page 3... [LR22]

SENATOR AVERY: Line 24. [LR22]

SENATOR FULTON: Yeah, yeah, line 21 and following. That's why I put the language in there. So, I mean, once the convention...his has never occurred. I mean, so obviously this is...I understand what we're biting off here. It's probably more than we can chew. But that's why the language is put in here. And, you know, we the Legislature express our intent and so, yeah, I recognize your argument. [LR22]

SENATOR SCHUMACHER: In order for the, and this is almost an absolute academic discussion because it can go nowhere, it takes 38 votes to put this into operation. And if we add up the population and the GDP produced by the 34, assuming this would pass for a second, 34 states could undo any piece of legislation, even though those 34 states represent a minority of the population and a minority of the GDP. So basically, in asking for this to be approved, you'd ask the bigger population states, and you could only lose 12 of them before it was...it wouldn't be put into effect, to allow a minority population, minority of the economic power of the country dictate to the federal government. How can that work? [LR22]

SENATOR FULTON: Maybe not dictate to the federal government but repeal that which has been put forward by the federal government. [LR22]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Government, Military and Veterans Affairs Committee
March 10, 2011

SENATOR SCHUMACHER: Why should it be so unfairly balanced that a minority of the population should be able to govern? [LR22]

SENATOR FULTON: Because we're not set...our nation was not set up based on population centers. We were set up first as states. And then the states, giving power to the federal government, that's how we've advanced. That's how we've evolved as a nation. It was not...the way we select a President is indicative of that fact. It's not a popular vote. We award electoral votes based on states. So I understand that's an argument to be made against it. But I would reply by saying that we states have some authority and as exercised through our state legislatures, if we were...if a number of states were to advance this and this would go as I'm construing and it's done properly through the states and not by population count. [LR22]

SENATOR SCHUMACHER: It's not necessarily true that the states created the federal government. I mean, the federal government created Nebraska. Only 13 colonies do the... [LR22]

SENATOR FULTON: Right, those states that existed. Right. [LR22]

SENATOR SCHUMACHER: But as I said, an interesting academic discussion. Thank you, Senator, for bringing it to us. [LR22]

SENATOR AVERY: Let me make one comment. It is true what Senator Schumacher said that a Constitutional Convention, by their nature, once convened they set their own rules. And they could completely ignore this amendment. And they could do anything they wanted to, including completely repealing the First Amendment, which we wouldn't be the same kind of country anymore. And I think that when we start tinkering around with some of the basic principles of our democratic government, as currently expressed in our constitution, you get on some pretty shaky ground. [LR22]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Government, Military and Veterans Affairs Committee
March 10, 2011

SENATOR FULTON: Understood. I understand the arguments. And this would apply to those delegates from Nebraska, understand there could be an argument made. I'll just return comment and say that your desire to preserve that which exists in our constitution, you sound an awful lot like I did yesterday, conservative. (Laughter) And I sound a lot like...I sound like a lot liberal today. [LR22]

SENATOR AVERY: No, think on it though. Let me go back to that question I had earlier about the counties being given the same kind of authority in the state of Nebraska. We just passed a law, it's now on the Governor's desk, I believe it's been on Final Reading, LB383 that cuts aid to county governments and to cities and NRDs. And I suspect if the counties had the right to, through two-thirds or three-quarters of the counties, to repeal what we just did, they would do that. Now would that be in the interest of the state? Would that serve our overall state purpose of balancing this budget without a tax increase? [LR22]

SENATOR FULTON: Um-hum. [LR22]

SENATOR AVERY: I would say no, I voted for that. Sometimes what may be in the interest of a few or even a majority of the states or a majority of the counties may not be in the interest of the nation or of the state. And so that's why this is a little bit shaky, I think. [LR22]

SENATOR FULTON: Let me...if I could put another...your argument has weight, I understand it. And to an extent I agree with it. Let me ask you this, if we did give this power to the counties and the cities or let's just say the counties, would we legislators behave differently? [LR22]

SENATOR AVERY: That's rhetorical, right? [LR22]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Government, Military and Veterans Affairs Committee
March 10, 2011

SENATOR FULTON: Well, yeah. I mean, we would. [LR22]

SENATOR AVERY: It has to be rhetorical. [LR22]

SENATOR FULTON: Sure. You know, the same way, if the states had this kind of power perhaps the federal government would behave differently. But I can only make that argument because you have some weight with your arguments so. Thank you, Senator. [LR22]

SENATOR AVERY: Anybody else wish to weigh in on this? Well, we could go all afternoon, but we will not. Thank you, Senator. [LR22]

SENATOR FULTON: Yeah, thank you. [LR22]

SENATOR AVERY: Proponent testimony, we'll now accept those who wish to support LR22. Good afternoon. [LR22]

SHELLI DAWDY: (Exhibit 2) Good afternoon. My notes are a mess here. My name is Shelli Dawdy, S-h-e-l-l-i D-a-w-d-y. And while I have a group that I am a part of that I started, I'm not here today representing that group because we haven't polled our members on that. It's not an organization, we don't raise funds so it's on an all volunteer kind of proposition. I'm here representing essentially myself. And a friend of mine, Linda Rohman, who...she has a certification in public policy analysis through her social psychology degree, and she's also an attorney, and she would have been the one to address you today but her mother is ill so she had to leave town. So I got stuck holding the bag. We did support this idea, bringing it before Senator Fulton, because we do support the idea of restoring the balance that was in existence with our system through the election of senators by the state legislatures until 1913. When the Seventeenth Amendment was repealed, I believe, we pulled that system out of balance. So the only recourse available currently to states is through the judicial system, and that is not...it's

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Government, Military and Veterans Affairs Committee
March 10, 2011

just not adequate for a number of reasons. If we look at that healthcare law, not to bring it up again to concern anyone that that's the entire motivation for this, but when we look at that court case, all of those court cases that are moving through the system right now, we have a lot of uncertainty going on with a very complex piece of legislation, what is it 2,000-some pages, extensive changes in the system within the state. And now we're in sort of a bit of chaos at the moment. If you can look at the last decision that was issued out the Northern District, Florida, by Roger Vinson, the government has been, the federal government has been given a stay for just seven days. And he actually chastised the states, including Nebraska who was...is a party in that suit, for not being bound by the decision that was tantamount to an injunction that was issued on January 31. So we have a complex piece of legislation like that, that's in the process of being implemented and was the only recourse available. Now we've got what constitutes a bit of mess and it costs money. It's costing money to litigate, it's costing the state money and possibly making structural changes that may have to be undone at a later point, kind of like leaving the barn door open and then trying to put the cows back in. I'd say let's put a nice latch on the gate. And that's how to restore that balance that we always had. And Senator Fulton, you know, mentioned that Prince v. United States case. If we look at what Justice Scalia wrote in the decision on that case, he mentioned that the idea of the federal government commandeering the states is very novel, that it wasn't really seen by the court until the 1970s. After decades of this out of balance with the 1913 change in the whole system, a number of cases were being brought. And you see quite a number of them starting in the seventies and running through especially the year 2000. That should be a novel situation where the federal government is encroaching on the rights of the state, on the sovereignty of the state of Nebraska or any other state. And we need to return to a place where that is a novel situation and that the number of cases that are being brought aren't so numerous and we don't have the kind of uncertainty we have now with this healthcare law. So if we're looking for a remedy, we need to look for one that is constitutional, that's orderly, that's predictable, and that has a high bar. We should not lightly overturn something like a federal law or regulation. And as Senator Fulton mentioned, nullification is not an orderly process, it's not

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Government, Military and Veterans Affairs Committee
March 10, 2011

constitutional because it's one state at a time saying, hey, we're not doing that over here. It should not work like that. And this is an option that is available. Now I'm sure I'll set off some debate with this, maybe not, but if we view the historical record on the court, of course, we see in, say, the "The Federalist" papers that the Supreme Court does have the right of judicial review, that's one of their powers. And it's a very important part of our system. But I think if we look at the historical record, we can see some evidence that is worth questioning, are they the ultimate arbiter of all that's constitutional? And do the states have a role to play in that? And I would say that we would really agree with Thomas Jefferson who, and then I will be finished, when he said, in an 1823 letter, which you have a full copy of in the packet that I handed you, when he wrote to Supreme Court Justice William Johnson, he said, "The Chief Justice, Marshall, says there must be an ultimate arbiter somewhere. True, there must be; but does that prove it is either party?" And in that letter, he's referencing the states or the Supreme Court. "The ultimate arbiter is the people of the Union, assembled by their deputies in convention, at the call of Congress or two-thirds of the states. Let them decide to which they mean to give an authority claimed by two of their organs." I would urge you if you would please send LR22 out to the floor, very importantly, with the attached amendment, which is also included in what you were given. We wouldn't support it otherwise, very important. And I would take any questions. Thank you. [LR22]

SENATOR AVERY: Thank you, Ms. Dawdy. Any questions from the committee?
Senator Brasch. [LR22]

SENATOR BRASCH: Thank you, Chairman and thank you, Ms. Dawdy. You mentioned you're here for yourself, but you just closed with "we wouldn't support it." [LR22]

SHELLI DAWDY: Oh, well, I'm here for myself and on behalf of Linda, who you'll see her name is there. So, yeah, I'm using the Imperial "we," that's never good. [LR22]

SENATOR BRASCH: Okay, I didn't know if there was a group. Is there just you and

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Government, Military and Veterans Affairs Committee
March 10, 2011

Linda? [LR22]

SHELLI DAWDY: Just, as I mentioned, I do have a group that... [LR22]

SENATOR BRASCH: Okay, and that group is... [LR22]

SHELLI DAWDY: It's called Grassroots of Nebraska. [LR22]

SENATOR BRASCH: Okay. [LR22]

SHELLI DAWDY: But I don't want to come here today telling you I took a poll of all the members of that group and it's not a formal organization so. [LR22]

SENATOR BRASCH: Okay. It's not, it doesn't represent the consensus of your organization. [LR22]

SHELLI DAWDY: I wouldn't know. I know for sure that our group members are very vociferous about state sovereignty. You saw the hearing room full last year, that was a lot... [LR22]

SENATOR AVERY: We were here. [LR22]

SENATOR BRASCH: Okay. [LR22]

SHELLI DAWDY: That's right. I was here and so were a good number of our members, yes. [LR22]

SENATOR BRASCH: All right, very good. No other questions. Thank you. [LR22]

SENATOR AVERY: Any more questions? Senator Karpisek. [LR22]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Government, Military and Veterans Affairs Committee
March 10, 2011

SENATOR KARPISEK: Thank you, Senator Avery. Thank you, Ms. Dawdy. When did your group form? [LR22]

SHELLI DAWDY: In the beginning of 2009, early in 2009, yes. [LR22]

SENATOR KARPISEK: And what precipitated that? [LR22]

SHELLI DAWDY: Well, here we go. We are...we were...did begin sort of our Tea Party group, oh boy. But we don't have an affiliation with a national entity. We're independent for the reason that solutions should begin as close to home as possible. And I actually agree with you in some ways about the cities and towns. It should be bottom up. That's why our group is called Grassroots so. We're focused on constitutional limited government and not taking orders from D.C. That just doesn't seem to reflect the very purpose of the group. [LR22]

SENATOR KARPISEK: Well, I'm glad that someone else can see that the people of Nebraska don't like taking orders from Lincoln either. [LR22]

SHELLI DAWDY: And I appreciate that and we should talk. [LR22]

SENATOR KARPISEK: We should. [LR22]

SHELLI DAWDY: Yeah. [LR22]

SENATOR KARPISEK: Thank you very much. Thank you, Senator Avery. [LR22]

SENATOR AVERY: Any other questions? Thank you, Ms. Dawdy, for coming. [LR22]

SHELLI DAWDY: Thank you. [LR22]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Government, Military and Veterans Affairs Committee
March 10, 2011

SENATOR AVERY: Any more proponent testimony? Anyone wish to speak in opposition? Any...are you...okay, please come forward. Welcome again. [LR22]

KATHY WILMOT: (Exhibit 3) Thank you. Again, Kathy Wilmot, and K-a-t-h-y W-i-l-m-o-t. Chairman Avery and members of the Government, Military and Veterans Affairs Committee, I really want to thank you for this opportunity to be able to speak before you today concerning LR22 and AM80, I believe the number is. I would like to urge you today to vote against passing this legislative resolution and the amendment to the full body of the Legislature. I appreciate Senator Fulton's attempt, I think, in the amendment to try to control the idea as much as possible to preserve our freedoms. But I still have concerns with how a possible convention would play out. Language on page 3 does call for the Legislature to apply to the Congress of the United States to call an Amendment Convention pursuant to Article V of the U.S. Constitution. And it is specifically, though, for a call for an Amendment Convention that I am especially in strong opposition to. Article V of the U.S. Constitution speaks of Congress proposing amendments. And I think it's important to note that that word is plural in the language of Article V. The language proposed by the amendment attempts to limit the Amendment Convention called by Congress to a single issue. However, there is no provision for that in the constitutional language of Article V. The amendment also further attempts to remove the call for an Amendment Convention if it is used for the purpose of calling a convention or to amend the constitution for any purpose other than that stated in the amendment. And this language I am convinced would have no effect, it's null and void since the U.S. Constitution does not contain a provision to rescind the call for a convention once two-thirds of the states have made that call. And, I guess, as I was thinking on this and trying to figure out maybe how to get everyone to understand what my concerns were, I think of it like in an old western, about the time the hangman would step up to put his foot on the lever because once he tripped that lever, there was no stopping what was going to happen next. And that's how I see a Constitutional Convention, we couldn't pull our agreement back. I'd also like to quote Chief Justice Warren Burger and he warned

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Government, Military and Veterans Affairs Committee
March 10, 2011

of the dangers of a Constitutional Convention back in 1983. And it's a somewhat lengthy quote. "I have also repeatedly given my opinion that there is no effective way to limit or muzzle the actions of a Constitutional Convention. The convention could make its own rules and set its own agenda. Congress might try to limit the convention to one amendment or to one issue, but there is no way to assure that the convention would obey. After a convention is convened, it will be too late to stop the convention if we don't like its agenda. The meeting in 1787 ignored the limit placed by the confederation Congress on it, 'for the sole and express purpose.'" They moved beyond that. "With George Washington as chairman, they were able to deliberate in total secrecy, with no press coverage and no leaks. A Constitutional Convention today would be a free-for-all for special interest groups, television coverage, and press speculation." And I continue to quote Chief Justice Warren Burger, "Our 1797 constitution was referred to by several of its authors as a 'miracle.' Whatever gain might be hoped for from a new Constitutional Convention could not be worth the risks involved. A new convention could plunge our nation into constitutional confusion and confrontation at every turn, with no assurance that focus would be on the subjects needing attention." When the delegates for our Constitutional Convention gathered in 1787, and I'm not a prof. on history, but they were given the Articles of Confederation to work from. However, as they met they quickly moved from simply discussing the Articles of Confederation and instead they wrote our constitution that set out a totally new system of government. And instead of the amendment procedure contained in the Articles of Confederation which required approval by Congress and 100 percent of the 13 states' legislatures, they provided for a ratification process that completely bypassed Congress and the states. Many who encourage a call for an Amendment Convention or Constitutional Convention ask that we simply have faith that the picture they paint will become a reality. At such a time, I believe it's important to look to our great leaders for guidance. And as the late, great President Ronald Reagan said, "Trust, but verify." With LR22 and AM80 we are being asked for a whole bunch of trust but there is no way to verify. And also in the language of the bill or the amendment it talks about the delegates to the convention. And I would ask you, you know, there's no procedure, who would they be chosen by? What if they

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Government, Military and Veterans Affairs Committee
March 10, 2011

were chosen by this Congress that we were just saying we don't always like how they do things to us or what if they were the delegates themselves? There's just no procedure. As someone said, we haven't plowed this ground. And so I really encourage you to end this resolution and the amendment in committee and to vote against advancing this to the Legislature's floor. [LR22]

SENATOR AVERY: Thank you, Ms. Wilmot. Senator Price. [LR22]

SENATOR PRICE: Thank you, Chairman Avery. Ms. Wilmot, thank you for your testimony. I don't propose to disagree with you about it becoming an ugly affair perhaps if someone would call a Constitutional Convention. But I was struck your use of the word and the analogy of a hangman because... [LR22]

KATHY WILMOT: Just the fact that once he trips that trigger, it's done. (Laugh) [LR22]

SENATOR PRICE: And that's fine. But isn't it the same process that we're so afraid of invoking, isn't that the process that gave birth to what many people call is a wonderful experiment, that if we didn't have a Constitutional Convention we wouldn't be here? And isn't it the same process that gave us an outline that you could have a Constitutional Convention? So I find it odd at the least that the fear, that I disagree. [LR22]

KATHY WILMOT: Yeah. [LR22]

SENATOR PRICE: But odd that we would paste a negative light on that which create what we enjoy and then gave us the power to do it. [LR22]

KATHY WILMOT: You know, and I can understand that because I agree, we have the best document. And they were geniuses, I mean, they really were. However, I guess, the thing I was trying to point out to you is the task that they were actually sent there to do they veered from. They did not take the Articles of Confederation and then, you

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Government, Military and Veterans Affairs Committee
March 10, 2011

know, work with those. They scrapped the whole thing. And I'm glad they did. We have a great document. As far as, and I know there were probably some scoundrels in those days, too. (Laugh) But when I look at the things, I guess, that I read in the news, the things I face, I happen to work in a prison, some of the things that I'm aware of that people, you know, I'm not sure that we have the same value set, the same integrity levels, the same ethics as a whole body. And some of that would probably concern me. I mean, the gentlemen that worked on our constitution I truly believe were genius. I think they did a marvelous job. And I think probably we have some geniuses today. I'm not sure they'd be chosen as the delegates to that convention. If I knew they would be, might be all right. But we don't know how people would be chosen. We don't even know who would do the choosing. So I think maybe we ought to leave well enough alone. (Laugh) [LR22]

SENATOR PRICE: Thank you. [LR22]

SENATOR AVERY: Any other questions? Senator Schumacher. [LR22]

SENATOR SCHUMACHER: Thank you, Senator Avery. Ms. Wilmot, there's another level here that's different from the original convention and that is we are part of a very integrated global society. If we were to have a convention with the supreme authority called, then how do you see the world economies who depend on our currency for international trade? How much confidence would there be in the dollar while this group of people were talking and maybe go this way or that way? And would they be loaning us money at \$50 billion a month, (inaudible) money? And how do you see that impacting not only looking internally at ourselves but the world who is now watching this stage? [LR22]

KATHY WILMOT: I use pretty graphic descriptions when I'm talking, so I guess that's why the hangman thing really stuck out there. But I think you would have some entities in the world that were sitting back like welshers, ready and hoping probably that we

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Government, Military and Veterans Affairs Committee
March 10, 2011

could fall apart, they could snap us up. I can't think that a lot of people would want to be maybe investing heavily in us at that time because everything would be in such a state of flux. But when you mention the other countries of the world and this global world that we live in, I guess, the other thing that strikes me right when you say that, which is not what you particularly asked me about, but I think of the court case, and I believe it was in Texas, and there's been some others where they actually referred to and invoked international law or other foreign laws in determining cases and things. I think our country is the best. And I really wouldn't want any of that type of influence into what we would set for laws for our country. [LR22]

SENATOR SCHUMACHER: I have nothing further. [LR22]

SENATOR AVERY: Any more questions? Thank you, Ms. Wilmot. [LR22]

KATHY WILMOT: Thank you. [LR22]

SENATOR AVERY: Any more opponent testimony? All right, we'll move to neutral testimony. Welcome back, Mr. Hedrick. [LR22]

RICHARD HEDRICK: I'm Richard Hedrick and I'm neutral on this. I was going to argue that this is state's right law that was started by the South at the Civil War, after the Civil War. Actually, it was started before the Civil War and the Civil War is the result of it. I would like to have the introducer put on term limits for the House and the Senate. I think we need to clear out the House and Senate. Thank you. [LR22]

SENATOR AVERY: Thank you, Mr. Hedrick. Questions for him? Thank you, sir. Any other neutral testimony? Seeing none, Senator Fulton, you going to waive? All right, that ends the hearing on LR22 and our hearings for today. Thank you all for coming. Have a good weekend. [LR22]